

Bureau of Land Management, Interior

§3211.17

through a competitive lease sale or noncompetitively.

(c) For leases issued before August 8, 2005, for which no election is made under §3200.7(a)(2), and for leases issued in response to applications pending on that date for which no election is made under §3200.8(b)(1), the rental rate is the rate prescribed in the regulations in effect on August 8, 2005 (43 CFR 3211.10 (2004)).

(d) For leases in which the United States owns only a fractional interest in the geothermal resources, BLM will prorate the rents established in paragraphs (a), (b), and (c) of this section, based on the fractional interest owned by the United States. For example, if the United States owns 50 percent of the geothermal resources in a 640 acre lease, you pay rent based on 320 acres.

§3211.12 How and where do I pay my rent?

(a) *First year.* Pay BLM the first year's rent in advance. You may use a personal check, cashier's check, or money order made payable to the Department of the Interior—Bureau of Land Management. You may also make payments by credit card or electronic funds transfer with our prior approval.

(b) *Subsequent years.* For all subsequent years, make your rental payments to MMS. See MMS regulations at 30 CFR part 218.

§3211.13 When is my annual rental payment due?

Your rent is always due in advance. MMS must receive your annual rental payment by the anniversary date of the lease each year. See the MMS regulations at 30 CFR part 218, which explain when MMS considers a payment as received. If less than a full year remains on a lease, you must still pay a full year's rent by the anniversary date of the lease. For example, the rent on a 2,000-acre lease for the 11th year, would be \$10,000 (\$5 per acre), due prior to the 10th anniversary of the lease.

§3211.14 Will I always pay rent on my lease?

(a) For leases issued on or after August 8, 2005 (other than leases issued in response to applications that were pending on that date for which no elec-

tion is made under §3200.8(b)(1)), and for leases issued before August 8, 2005, for which an election is made under §3200.7(a)(2), you must always pay rental, whether you are in a unit or outside of a unit, whether your lease is in production or not, and whether royalties or direct use fees apply to your production.

(b) For leases issued before August 8, 2005, for which no election is made under §3200.7(a)(2), and for leases issued in response to applications pending on that date for which no election is made under §3200.8(b)(1), you must pay rent for all the lands in your lease until:

(1) Your lease achieves production in commercial quantities, at which time you pay royalties; or

(2) Lands in your lease are within the participating area of a unit agreement or cooperative plan, at which time you pay rent for lands outside the participating area and pay royalties for lands within the participating area.

§3211.15 How do I credit rent towards royalty?

You may credit rental towards royalty under MMS regulations at 30 CFR 218.303.

§3211.16 Can I credit rent towards direct use fees?

No. You may not credit rental towards direct use fees. See MMS regulations at 30 CFR 218.304.

§3211.17 What is the royalty rate on geothermal resources produced from or attributable to my lease that are used for commercial generation of electricity?

(a) For leases issued on or after August 8, 2005 (other than leases issued in response to applications that were pending on that date for which the lessee does not make an election under §3200.8(b)(1)), the royalty rate is the rate prescribed in this paragraph.

(1) If you or your affiliate sell(s) electricity generated by use of geothermal resources produced from or attributed to your lease, then:

(i) For the first 10 years of production, the royalty rate is 1.75 percent;

(ii) After the first 10 years of production, the royalty rate is 3.5 percent; and

(iii) You must apply the rate established under this paragraph to the gross proceeds derived from the sale of electricity under applicable MMS rules at 30 CFR part 206, subpart H.

(2) If you or your affiliate sell(s) geothermal resources produced from or attributed to your lease at arm's length to a purchaser who uses those resources to generate electricity, then the royalty rate is 10 percent. You must apply that rate to the gross proceeds derived from the arm's-length sale of the geothermal resources under applicable MMS rules at 30 CFR part 206, subpart H.

(b) For leases issued before August 8, 2005, whose royalty terms are modified to the terms prescribed in the Energy Policy Act of 2005 under § 3212.25, BLM will establish royalty rates under paragraphs (b)(1) and (b)(2) of this section.

(1) For leases that, prior to submitting a request to modify the royalty rate terms of the lease under section 3212.26, produced geothermal resources for the commercial generation of electricity, or to which geothermal resource production for the commercial generation of electricity was attributed:

(i) If you or your affiliate uses geothermal resources produced from or attributed to your lease to generate and sell electricity, BLM will establish a rate on a case-by-case basis that it expects will yield total royalty payments over the life of the lease equivalent to those that would have been paid under the royalty rate in effect for the lease before August 5, 2005. The rate is not limited to the range of rates specified in 30 U.S.C. 1004(a)(1). You must apply the rate that BLM establishes to the gross proceeds derived from the sale of electricity under applicable MMS rules at 30 CFR part 206, subpart H.

(ii) If you or your affiliate sells geothermal resources produced from or attributed to your lease at arm's length to a purchaser who uses those resources to generate electricity, the royalty rate is the rate specified in the lease instrument. You must apply that rate to the gross proceeds derived from the arm's-length sale of the geothermal resources under applicable MMS rules at 30 CFR part 206, subpart H.

(2) For leases that, prior to submitting a request to modify the royalty rate terms of the lease under section 3212.26, did not produce geothermal resources for the commercial generation of electricity, and to which geothermal resource production for the commercial generation of electricity was not attributed, BLM will establish royalty rates equal to those set forth in paragraph (a)(1) or (a)(2) of this section, whichever is applicable.

(c) For leases issued before August 8, 2005, whose royalty terms are not modified to the terms prescribed in the Energy Policy Act of 2005 under § 3212.25, and for leases issued in response to applications pending on that date for which the lessee does not make an election under § 3200.8(b)(1), the royalty rate is the rate prescribed in the lease instrument.

§ 3211.18 What is the royalty rate on geothermal resources produced from or attributable to my lease that are used directly for purposes other than commercial generation of electricity?

(a) For leases issued on or after August 8, 2005 (other than leases issued in response to applications that were pending on that date for which the lessee does not make an election under § 3200.8(b)), and for leases issued before August 8, 2005, whose royalty terms are modified to the terms prescribed in the Energy Policy Act of 2005 under § 3212.25:

(1) If you or your affiliate use(s) the geothermal resources directly and do(es) not sell those resources at arm's length, no royalty rate applies. Instead, you must pay direct use fees according to a schedule published by MMS under MMS regulations at 30 CFR 206.356.

(2) If you or your affiliate sell(s) the geothermal resources at arm's length to a purchaser who uses the resources for purposes other than commercial generation of electricity, your royalty rate is 10 percent. You must apply that royalty rate to the gross proceeds derived from the arm's-length sale under applicable MMS regulations at 30 CFR part 206, subpart H.

(3) If you are a lessee and you are a state, tribal, or local government, no royalty rate applies. Instead you must